LEE WONG TIANG v. PUBLIC PROSECUTOR *RE* S.K. LEE, APPLICANT

[O.C.J. (Sharma J.) May 4, 1971]
[Johore Bahru — Originating Motion No. 3 of 1971]

Advocates & Solicitors — Ad hoc admission — Singapore advocate and solicitor — "Special qualification" — Meaning of — "Experience of a nature not available" amongst advocates and solicitor in Malaysia — Duty of Attorney-General and Bar Council — Advocates and Solicitor Ordinance, 1947, s.8A(2)(a).

Section 8A of the Advocates and Solicitors Ordinance is aimed to facilitate the admission of those members of the Bar from other countries who have attained renown and distinction. An applicant under that section should be such a person who, as a lawyer and on the evidence before the court, exhibits distinguished qualities or is devoted to a particular branch or field of law. The special qualifications or experience are required to be of a quality and type which cannot be had amongst the advocates and solicitors in Malaysia. He has to satisfy the court that the special qualifications he possesses or the experience he professes to have are comparatively of such a type and character that no advocate and solicitor practising in Malaysia can be said to possess or equal that high degree of accomplishment which has been acquired or exhibited by the applicant.

In this case the applicant sought for an *ad hoc* admission under section 8A. The grounds on which the application was made were:- (1) The applicant was instructed to represent the appellant in the appeal which is to come up before the Federal Court. (2) The appeal record was served on the applicant. (3) The applicant appeared at the trial which was inordinately long and in which numerous points of law were involved. (4) The case dealt with highly technical and expert evidence given by psychiatrists. (5) The applicant has "much experience in murder cases." (6) The applicant has intimate personal knowledge of the case. (7) The applicant was a solicitor on record at the time the appeal was filed. (8) The applicant believes that he has in this particular case special qualifications, experience and knowledge which is not available amongst the advocates and solicitors in Malaysia.

The Attorney-General did not strongly object to the application on the ground that Mr. Lee had represented the appellant at the trial and that it might not be right that he should not appear at the hearing of the appeal. The Bar Council also neither supported nor opposed the application.

Held: (1) the mere fact that a particular lawyer had been instructed to represent a particular client in a particular matter did not bring him within the ambit of section 8A, nor did the fact that a copy of the appeal record was served on him, nor did the fact that at the time the notice of appeal was filed he was the solicitor on record;

(2) the mere fact that the trial of a particular case lasted for a long time and that in the course of such trial numerous difficult questions of law were raised did not by itself confer upon the advocate and solicitor conducting that trial any special qualifications or experience;

(3) the mere fact that Mr. Lee had conducted a number of murder trials could not be said to mean that there was no advocate and solicitor available in Malaysia who had not conducted murder trials with the same skill and success as Mr. Lee;

(4) a very heavy duty is cast on the court in forming an opinion as to the relative qualities or qualifications and experience of the advocates and solicitors in this country and the qualifications and experience of others seeking *ad hoc* admission under section 8A. Sub-section (2) (a) does not anywhere say that the court has to consider any "special reasons" or "special circumstances". The courts can, however, decide only on the evidence which is before them. In this application as no attempt had been made to challenge the plea of Mr. Lee that he had special qualifications and knowledge and experience of a nature which was not available amongst the advocates and solicitors in Malaysia, the court had no other alternative but to allow the application.

ORIGINATING MOTION.

Ng Kong Yeam for the applicant.

Hamzah bin Salleh (Senior Federal Counsel) for the Attorney-General.

C. Paramjothy for the Bar Council.

Sharma J. (delivering oral judgment): This is an application by Mr. Shoo Khoon Lee for an *ad hoc* admission under section 8A of the Advocates and Solicitors Ordinance, 1947. The relevant provisions are laid down in sub-section (2) (a) which reads:

"No person shall be admitted to practise as an advocate and solicitor under sub-section (1) unless

(a) for the purpose of that particular case he has, in the opinion of the court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia."

The fate of the application depends entirely on the meaning and interpretation of sub-section (2) (a) of section 8A. Section 8A seems aimed at harmonising the interests of the advocates and solicitors of Malaysia with the wishes of a particular litigant who desires to retain a particular lawyer, such particular lawyer being a person who but for the amendments recently made, would have been a "qualified person" under the Advocates and Solicitors Ordinance, 1947.

The word "qualification" used in section 8A (2) (a) denotes an accomplishment or a quality and the adjective "special" qualifying it indicates that the accomplishment contemplated should be of an exceptional degree or such that excels in some way the measure of accomplishments reached by the advocates and solicitors of Malaysia. As I read sub-section (2)(a) the applicant should be such a person who, as a lawyer and on the evidence before the court, exhibits distinguished qualities or is devoted to a particular branch or field of law. Instances would be of persons who specialise, for example, in income tax law, or trade marks, divorce practice, shipping law, etc. and have achieved such heights in the exercise of their profession that they stand out as great luminaries in the firmament of law. The list of such examples can by no means be exhaustive. It all depends upon the particular qualifications a particular lawyer has or the particular subject to which he has devoted himself. There may be, for example, instances where a lawyer exclusively practises before the highest courts of the land, or the highest appellate courts of the various countries of the Commonwealth or other lands where the law is similar to our own.

The words "not available" used in sub-section (2) (a) seem to mean "not obtainable." It would thus seem that it is the excelling virtue born of the applicant's special qualifications or experience that has got to be considered and that excelling virtue must be such as outclasses the excellence to be found in the local lawyers. The special qualifications or experience are required to be of a quality and type which cannot be had amongst the advocates and solicitors in Malaysia. The applicant may have special qualifications or ex-

perience but that alone does not seem to be sufficient under the statute. He has to go further and satisfy the court that the special qualifications he possesses or the experience he professes to have are comparatively of such a type and character that no advocate and solicitor practising in Malaysia can be said to possess or equal that high degree of accomplishment which has been acquired or exhibited by the applicant. I have said earlier that in my view section 8A seems apparently aimed to facilitate the admission of those members of the Bar from other countries who have attained renown and distinction.

The grounds on which the application is made are contained in the affidavits of Mr. S. K. Lee himself and these are more or less repeated in the affidavit of Mr. Ng. I will shortly deal with each of these grounds. The grounds put forward are:—

(1) The applicant was instructed to represent the appellant in the appeal which is to come up before the Federal Court.

(2) The appeal record was served on the applicant.

(3) The applicant appeared at the trial which was inordinately long and in which numerous points of law were involved.

(4) The case dealt with highly technical and expert evidence given by psychiatrists.

(5) The applicant has "much experience in murder cases."

(6) The applicant has intimate personal knowledge of the case.

(7) The applicant was a solicitor on record at the time the appeal was filed.

(8) The applicant believes that he has in this particular case special qualifications, experience and knowledge which is not available amongst the advocates and solicitors in Malaysia.

I would like to deal with each of these grounds. The mere fact that a particular lawyer has been instructed to represent a particular client in a particular matter does not bring him within the ambit of section 8A, nor does the fact that a copy of the appeal record was served on him, nor does the fact that at the time the notice of appeal was filed he was the solicitor on record. The mere fact that the trial of a particular case lasts too long and that in the course of such trial numerous difficult questions of law are raised does not by itself confer upon the advocate and solicitor conducting that trial any special qualifications or experience. Maybe the trial might result in an experience of that particular type of case and that experience could be put to advantage in future cases and it may be that in the conduct of that trial a special study of certain aspects of the law had to be made but that does not mean or imply that the acquisition of that knowledge or experience in a particular trial bestows on the advocate and solicitor such a quality of knowledge or experience which cannot be said to be available amongst advocates and solicitors who regularly practise in Malaysia. I have no evidence before me that Mr. Lee has because he appeared for the accused at the trial attained that experience or knowledge which no other advocate and solicitor in Malaysia has. I do not for a moment doubt that Mr. Lee must have made a study of the relevant aspects of psychiatry in order to cross-examine the psychiatrists produced by the prosecution or to examine the psychiatrist produced by the defence but the advantage of that knowledge and study is already on record. The matter has to be argued in the Federal Court and all that is needed is a careful and intensive study of the appeal record. I concede that Mr. Lee may not have to study it word by word whereas an advocate and solicitor in Malaysia may perhaps have to go through it with extreme care, devote more time to its study and maybe study it a number of times with a concentrated mind before he can have a mastery of the facts and the law involved. That constitutes a difference in time the two may take to understand and master the facts of the case but is by no means any indication of the difference in special qualifications or experience possessed by Mr. Lee or a local advocate and solicitor and which is referred to in sub-section (2) (a) of section 8A of the Advocates and Solicitors Ordinance. Again the mere fact that Mr. Lee has conducted a number of murder trials cannot be said to mean that there is no advocate and solicitor available in Malaysia who has not conducted murder trials with the same skill and success as Mr. Lee. Mr. Lee says he has intimate personal knowledge of the case. I was not very sure of what that meant and when I asked Mr. Ng, who appeared for the applicant, I was told that all it meant was that Mr. Lee was fully conversant with the facts of the case. I do not think that the ground can carry the application any further. The last ground on which the application is made is in fact a reproduction from sub-section (2) (a) of section 8A of the Advocates and Solicitors Ordinance and reads:

"that in all circumstances aforesaid I verily believe that I have in this particular case special qualifications, experience and knowledge not available amongst advocates and solicitors in Malaysia."

Enche Hamzah Salleh who appeared for the Attorney-General said and I quote his words: "The Attorney-General does not strongly object to the application" and the grounds for not so opposing it are stated by Enche Hamzah to be entirely based upon the fact that as Mr. Lee had represented the appellant at the trial it may not be right that he should not appear at the hearing of the appeal. The Attorney-General does not agree with that interpretation of section 8A of the Advocates and Solicitors Ordinance as has been placed by the applicant, but has taken the attitude that the prosecution should not deprive the appellant of the choice of his counsel. The Attorney-General seems to have taken what may be called a benevolent, humane or sporting view of the case. That may very well be so. A very heavy duty is cast on the court in forming an opinion as to the relative qualities or qualifications and experience of the advocates and solicitors in this country and the qualifications and experience of others seeking *ad hoc* admission under section 8A. The Attorney-General may have taken a very humane and reasonable view of

the matter but I regret to observe that as far as the determination of this application was concerned I had looked forward both to the Attorney-General and the Bar Council for their views on what section 8A means and how it should be interpreted and applied to the facts of this case. Sub-section (2) (a) does not anywhere say that the court has to consider any "special reasons" or "special circumstances." I have given my views of how I interpret sub-section (2) (a) and as far as this application is concerned I have to be guided by that interpretation alone as I have received no constructive assistance either from the Bar Council or the Attorney-General. It may be I am wrong in my interpretation but my duty is to administer the law as I find it and not as it was perhaps intended to be in the secret chambers of the mind of the legislature. I have to find that intention from the words of the statute itself. If that intention has remained hidden I am deprived of the access to the hidden recesses of the legislature's mind. The courts do not wish to be inhumane either but have fearlessly to discharge their duties in order to see that the will of the legislature is carried out. The courts can, however, decide only on the evidence which is before them.

The views of the Bar Council as expressed by Mr. Paramjothy are similar to the views expressed by the Attorney-General in that the Bar Council neither supports nor opposes the application. I had thought that the matter primarily involved the advocates and solicitors of Malaysia and the Bar Council should have taken this opportunity to put a constructive interpretation on what it thinks the sub-section means. No affidavits have been filed in opposition to the application. I for myself have great regard and esteem for the high standard of knowledge and experience possessed by members of the Bar in this country. I do feel and know that there are a number of our own advocates and solicitors who have obtained outstanding distinction in the profession and whose services are available to the public. This application relates to a murder case. It is like so many other murder cases where a plea of insanity is raised. The duty of the judge, however, is not to import his personal knowledge into the matter but to act only on the evidence which is properly produced before him. As no attempt has been made to challenge the plea of Mr. Lee that he has special qualifications and knowledge and experience of a nature which is not available amongst the advocates and solicitors in Malaysia, I have no other alternative but to allow this application.

In conclusion I might say that it is always open to the court to question the applicant or any other deponent who files an affidavit in support of the application under section 8A in order to form an opinion it is required to form of the special qualifications and experience of the applicant seeking admission. The parties served with the application should give the court the benefit of their advice and view of the law in a constructive manner as is expected of them for to remain merely passive or to adopt a strictly neutral or even benevolent attitude does not fulfil the purpose for which such bodies or offices exist. Such an attitude could well defeat the object of the legislature.

The application is allowed.

Application allowed.